

GLACIER BAY PARK CONCESSIONS, INC.

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Glacier Bay Park Concessions, Inc., a Corporation, organized and existing under the laws of the State of Alaska, hereinafter referred to as the "Concessioner":

W I T N E S S E T H

THAT WHEREAS, the Secretary entered into Concession Contract No. CC-GLBA001-86 (formerly CC-9100-06-0001) on August 27, 1986 whereby the Concessioner is authorized to provide facilities and services for the public within Glacier Bay National Park and Preserve during the period January 1, 1986 through December 31, 2001 (as amended); and

WHEREAS, the Concessioner and the Secretary have agreed to amend this contract:

NOW, THEREFORE, the parties hereto covenant and agree to and with each other that the Concession Contract CC-GLBA001-86 is hereby amended, effective as of May 3, 1996, as follows:

The following new section, Section 19.1 Accounts, is added to the contract:

SEC. 19.1 ACCOUNTS

(a) CAPITAL ACCOUNT (1) As partial consideration for the privileges granted by this CONTRACT, the Concessioner shall establish a "Capital Account" (CA) by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the CA, including interest earned thereon, shall be used in accordance with Exhibit "H" only for construction of qualified improvements approved by the Superintendent in accordance with priorities established by the National Park Service Field Director. Projects estimated to cost over \$1,000,000 must be approved in writing by the National Park Service Director.

(a)(2) Improvements paid for with funds from the CA will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 4 and 5 of this CONTRACT, or otherwise, from Concessioner funds exclusive of those funds contained in the CA. Funds in the CA shall not be used for purposes for which those Sections would apply. The Concessioner shall have no ownership, Possessory Interest or other interest in improvements made from the CA.

(a)(3) Improvements paid for with funds from the CA will not include improvements previously required by Sections 1(b)(1) or 1(b)((2) of the CONTRACT.

(a)(4) The Concessioner shall deposit into an interest bearing account at a Federally insured

*** GLACIER BAY NATIONAL PARK & PRESERVE ***
*** NATIONAL PARK SERVICE - ALASKA FIELD AREA ***

financial institution within FIFTEEN (15) days after the last day of each month that the Concessioner operates THREE AND FOUR TENTHS PERCENT (3.4%) of GROSS RECEIPTS as defined in this CONTRACT. The account shall be established and maintained in accordance with Exhibit "H" of this CONTRACT.

The amount of each monthly deposit due shall be based upon the sum of the accumulated annual GROSS RECEIPTS as of the end of the prior month.

The Concessioner shall provide written verification to the Superintendent at the time that each monthly deposit is made including the amount of the deposit and the basis of the calculation.

An interest charge will be assessed on overdue deposits for each THIRTY (30) day period, or portion thereof, that the deposit is delayed beyond the FIFTEEN (15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(a)(5) The Concessioner shall submit annually with the submittal of the Concessioner's annual financial statement a statement reflecting the Concessioner's total activity in the CA for the preceding accounting year. The statement shall reflect all monthly credits, expenses by project, and the interest earned.

(a)(6) Advances or credits to the CA by the Concessioner are not permitted. Projects will be carried out as the Superintendent shall direct in writing and in advance of any expenditure being made and in accordance with Exhibit "H".

(a)(7) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the CA that may have been originally attributable to the Concessioner shall be used in accordance with the purposes of the CA, Exhibit "H", and agreements used for management of the CA.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals.

Executed in triplicate, at Anchorage, Alaska, this 24th day of September, 1996.

GLACIER BAY PARK CONCESSIONS, INC.

UNITED STATES OF AMERICA

BY: /s/ Mark Richardson

Mark J. Richardson
President/CEO

BY: /s/ Paul Anderson

(for) Robert D. Barbee
Field Director, Alaska
National Park Service

ATTEST:

BY:

*** GLACIER BAY NATIONAL PARK & PRESERVE ***
*** NATIONAL PARK SERVICE - ALASKA FIELD AREA ***

Title:

EXHIBIT H - CONCESSION CONTRACT ACCOUNT CONTROL PROCEDURE

INTRODUCTION

For the purposes of this Exhibit, the term "Superintendent" hereinafter will refer to the "Superintendent" or his/her designee." The term "Concessioner" hereinafter will refer to the Concessioner.

This document is about the use of funds. The source of these funds is established in the contract language at section 19.1, by Amendment #3.

The Capital Account (CA) is to be used to rehabilitate or construct facilities which directly support concessioner services authorized and/or required under this contract. The CA is established as a contract obligation. No possessory interest is accrued by the Concessioner for improvements made by this account.

Funds in the CA account can be invested in various instruments in advance of being used to carry out the concessioner's obligations under the contract. Whatever the method selected to hold the funds pending project work beginning, the parties to this contract agree that all funds will either be held in an account(s) insured by the Federal Deposit Insurance Corporation of a similar insuring activity of the Federal government and/or that all investment instruments will be notes, bills, and bonds issued by the United States Treasury which shall be whole instruments including both principal and interest (no derivative instruments) and which shall be directly backed by the full faith and credit of the United States of America.

The funds in the CA will be held in a FDIC insured Business Money Market Account (BMMA) and/or a Corporate Checking Account (CCA) established by the Concessioner to carry out concessioner obligations under this contract.

Deposits shall be made into CA accounts established by the Concessioner to carry out the purposes of the contract. The Concessioner makes an irreversible commitment when deposits are made into a CA. Deposited funds do not become Government funds. Interest earned on CA accounts becomes an addition to the balance of the CA.

CA funds must be maintained in separate accounts with record keeping used to maintain continuous records of the balances and allocation of income and expenses.

Concessioners are responsible for reporting or ensuring the reporting of CA activity each month and for annually filing, as part of their Annual Financial Report, the schedules that may be required by the Secretary.

The Concessioner shall not be paid or reimbursed in any way for account management. However, account management expenses incurred by third parties with the written approval, in advance, of the properly delegated National Park Service authority may be considered as account

expenses.

The Concessioner may, with the approval of the Superintendent, be allowed to charge the CA for actual expenses incurred, in an amount not to exceed ten percent (10%) of approved project expenditures, for reasonable concessioner administrative costs directly associated with carrying out individual projects. The Concessioner shall provide a detailed listing of each cost incurred to the Superintendent who shall determine the reasonableness and appropriateness of such expenses prior to their being allowed.

CA is not to be used for the payment of routine maintenance and operating expenses of the Concessioner. Additionally, the CA is not to be used for maintenance of government property not assigned to the Concessioner or for government projects or activities not directly related to the provision of the involved concessioner's services.

CA funds are not to be used to pay or otherwise reimburse or credit concessioner annual operating costs or government appropriation accounts.

The contracts entered into by the Concessioner (or others should that be authorized) to undertake projects are private contracts, not government contracts, issued at an arm's length to obtain the best contract price possible. The Concessioner shall not, directly or indirectly, enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

The Superintendent may require that the CA fund the cost of an independent, third party construction supervisor/inspector to represent the interests of the Government on any project where the Superintendent feels that would be cost effective and necessary to the sound administration of the project.

The Concessioner shall ensure that a Builders Risk From insurance policy is in effect during the construction. The type and amount of insurance will be approved in writing by the Superintendent. This policy as an appropriate expenditure for the CA.

In the event of any inconsistency between this Exhibit and the main body of the concession contract, the contract shall prevail.

POLICY FOR USE OF THE CAPITAL ACCOUNT

The contract includes specific provisions establishing a CAPITAL ACCOUNT (CA) and describing its purpose or principal goals.

The basis for the account is the need to establish systematically available funds for the ongoing improvement of concession facilities. The use of a CA allows reserves to be established for known requirements even while exact project, construction timing, and planing are not yet resolved.

CA projects include project planning, design, and construction of new buildings and infrastructure, rehabilitation of existing buildings and related infrastructure, demolition of old

facilities, and site restoration.

The CA is established to undertake nonrecurring projects of significant capital improvement to real property. The CA will not be used for routine or cyclic repair and maintenance except where a CA project would obviate the need for cyclic repair and maintenance. The CA will not be used for acquisition, lease or maintenance of personal property.

PROJECT NOMINATION AND APPROVAL

1. Spending money from the CA requires a coordinated effort between the Concessioner and the Superintendent. Projects must be proposed, prioritized, approved, bid and accomplished with an orderly process that ensures accountability.

2. The National Park Service staff and/or the Concessioner shall submit proposals to the Superintendent for the use of the CA using a format established by the Superintendent for "Account Project Nomination" (a standard control form). It is intended that a nomination form be the first step in the development of a project file.

3. The Superintendent will establish an Account Committee (AC) to review and recommend approval/disapproval of project nominations. The committee will include at least the Park's Concession Management Specialist and will also include other staff members deemed appropriate by the Superintendent. The Chair will be the park's lead concession operative unless a different appointment is made by the Superintendent. The Superintendent will establish a process to review and approve/disapprove project nominations based on but not limited to the following:

- Applicable laws and regulations

- NPS Policies

- Concession Contract and Amendments Including the Appropriateness of the Project Given the CA Purposes Stated in this Exhibit

- Operating and Maintenance Plans

- Need, based on resource impacts or human risk factors

- Compliance with NPS planning documents

- Other applicable factors

Upon completion of the review, the AC will prepare a record of the evaluation and a recommendation for approval/disapproval by the Superintendent. The documentation will be placed in the "Project Statement"(a standard control form).

4. A Project Statement will guide and document each project's implementation through completion. This Statement will contain the following: justification, specific proposal, scope of work, design responsibility, proposed project schedule and compliance requirements, The

Project Statement will be signed by the Superintendent and the Concessioner's authorized representative. The signed Project Statement constitutes official authority for the Concessioner to begin work on the project.

The Project Statement will provide a chronological audit trail of the projects decision making activity including meetings, inspections, change orders, etc. from nominations to project completion. Support documents will be maintained in the Project File or reference in the Project Statement where related documents can be found.

SPECIFICATIONS, DESIGN, AND BIDDING

- 1.a. Work funded by CA is to be accomplished through competitive contracts.
- 1.b. Construction work will not be done by Concessioner employees unless the Superintendent determines that there are unusual circumstances that make such work both advantageous and able to be managed effectively. Concessioner may use sole-source contracts only with the prior approval of the Superintendent.
- 1.c. Concessioner may not bid as independent contractors, or be employed by the contractor for CA projects.
- 1.d. The Concessioner shall not directly or indirectly, enter into any contract whereby it benefits directly or indirectly through the transfer of funds or other benefits from a CA project contractor.
- 1.e. Exceptions to these policies may be granted in writing by the Superintendent on a case-by-case- basis when there are unusual circumstances, clear advantages to the government, and adequate controls.
2. The Concessioner will develop a project description sufficient to secure an architect, engineer, or construction contractor. These will be reviewed and authorized in writing by the Superintendent.
3. Plans and specifications will be prepared by the Concessioner and will follow NPS-10, NPS-48, and NPS-70. When design is involved in a project, the designs will be reviewed by the Superintendent as appropriate to the project, such as 50%, draft 100% completion, etc. Appropriate time should be allowed for design review, by appropriate NPS staff at park, region, or service center, or by independent consultants.
4. Once plans and specifications are approved, the Concessioner will prepare to advertise or otherwise solicit or secure estimates or bids for the project.
5. For each project, the package for bidding or estimating will include at least the plans and

specifications, the General Provisions, and a draft contract or agreement under which the work will be carried out and that has been reviewed and approved by the Superintendent. If lodging and/or meals are provided by the Concessioner as part of the contract, the contract must include this provision and rates. If you are not doing a construction project, prepare an appropriate package for that action and determine how to proceed to bid or otherwise secure cost estimates.

6. If the project is bid, The Concessioner will receive, open, and evaluate project bids.
7. The Concessioner will recommend and justify a contractor from among the bidders or from other sources if a bid process was not used. This recommendation will be accepted/rejected by the Superintendent in writing. Once confirmation has been issued, the Concessioner is authorized to sign a contract and proceed with the project.
8. At this time, the Concessioner will submit to the Superintendent as estimate of the final budget and time schedule for the project.
9. At appropriate intervals the Concessioner will submit to the Superintendent as estimate of the final budget and time schedule for the project.
10. Change orders on project contracts require approval in writing from the Superintendent.
11. Upon certification from the contractor that a project is complete, the project will be inspected jointly by the Concessioner and the Superintendent. The project will not be accepted by the Concessioner until authorized in writing by the Superintendent.
12. Upon project completion, the Concessioner will submit to the Superintendent a project completion report including total project costs, warranties, service manuals, other similar documents, and as-built drawings of the project in the form specified. Invoices, certificates, and other documentation related to the final segment of work accomplished shall accompany the report and be the basis for final payment of the contractor. Final payment to the contractor and final reimbursement to the Concessioner for administrative costs shall not be made until the project has been accepted in writing by the Superintendent. The Concessioner is required to submit a summary of administrative costs for the project.

GLACIER BAY PARK CONCESSION, INC.

UNITED STATES OF AMERICA

BY: /s/ Mark Richardson
Mark J. Richardson
President/CEO

BY: /s/ Paul Anderson
(for) Robert D. Barbee
Field Director, National Park Service

DATE: 9/3/96DATE: 9/3/96